

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:21-CV-00122-KDB-DSC**

EQUATORIAL SEAFOOD, LLC,

Plaintiff,

v.

**LINEAGE LOGISTICS LLC, ET
AL.,**

Defendants.

ORDER

THIS MATTER is before the Court on the motion of Defendants Lineage Logistics, LLC and LLH MRS Master RE, LLC (together the “Lineage Defendants”), only two of the five Defendants in this action, to strike Plaintiff’s Notice of Dismissal (Doc. No. 7). Although the Court has already closed this matter based on the Plaintiff’s voluntary notice of dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure, in the interest of clarity the Court will briefly address and deny the Lineage Defendants’ motion.

Rule 41 permits a plaintiff to dismiss an action without prejudice “before the opposing party ... serves an answer....” Fed. R. Civ. Proc. 41(a)(1)(A)(i), and the Plaintiff has timely done so in this matter. However, the Lineage Defendants argue that this Court’s *Standing Order Requiring an Initial Settlement Conference in Civil Cases Assigned to the Honorable Kenneth D. Bell* (“Standing Order”), Docket No. 5:19-MC-5 (W.D.N.C.), “modifies and supersedes Rule 41” such that Plaintiff should not be permitted to voluntarily dismiss the action. Defendants are incorrect. The Court’s Standing Order does not abrogate or limit Rule 41 to deny plaintiffs the opportunity to dismiss their actions prior to the filing of an answer. In fact, even though the

Standing Order requires the parties to discuss potential settlement prior to the filing of an answer, it explicitly does not alter a defendant's obligation to timely file an answer. Further, to the extent that Plaintiff refiles its action in another forum as predicted by the Lineage Defendants then the defendants in that newly filed action will have the opportunity to seek relief from that filing under the governing rules and statutes.¹ Accordingly, the Lineage Defendants' motion to strike will be denied and this case will remain closed.

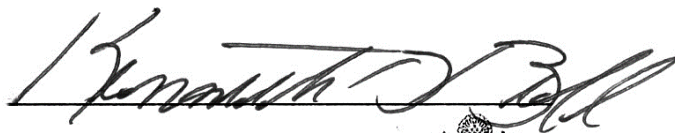
ORDER

NOW THEREFORE IT IS ORDERED THAT:

1. The Lineage Defendants' Motion to Strike Notice of Dismissal (Doc. No. 7) is **DENIED**; and
2. This matter shall remain closed in accordance with this Order.

SO ORDERED ADJUDGED AND DECREED.

Signed: August 25, 2021



Kenneth D. Bell
United States District Judge



¹ This Court of course expresses no opinion on the merits of any efforts defendants may make in opposition to a future filing.